

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	
)	CASE NO. CR21-117 RSM
Plaintiff,)	
)	
v.)	
)	ORDER DENYING REQUEST TO
EDWARD L. ABERCROMBIE,)	REOPEN DETENTION HEARING
)	
Defendant.)	
_____)	

This matter comes before the Court on Defendant's motion to reopen his detention hearing. Dkt. 25. Defendant argues that release is appropriate because he is in a stable long term relationship, his cooking equipment is in storage and will be lost if he is not released, and he is in pain from an ankle injury. *Id.* at 2. The government opposes the motion. Dkt. 32. The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby DENIES the motion for the reasons stated herein.

PROCEDURAL AND FACTUAL BACKGROUND

On June 30, 2021, investigators executed search warrants arising from a large scale

01 investigation in this District. The Defendant was arrested on probable cause and charged via
02 Complaint with felon in possession of a firearm. Dkt 1. The Defendant made his Initial
03 Appearance on June 30, 2021, Dkt. 4, and the government moved for detention. Dkt. 6.
04 The Court set a detention hearing for July 2, 2021. The defendant did not seek additional
05 time to prepare. At the hearing the Court heard from defense counsel and the government,
06 and Court granted the government's motion for detention. Dkt. 8, 9. The Court entered an
07 order for detention, noting:

08 Defendant has an extremely extensive criminal record that dates back to
09 1986, and includes assault, escape, and federal convictions for felon in
10 possession of a firearm, possession of cocaine base with intent to distribute
11 and carrying a firearm during and in relation to a drug trafficking crime. He
12 violated the terms of his federal supervision three times, and his supervision
13 was ultimately terminated upon request by the Probation Office. The current
14 charge involves possession of two firearms at his residence.

15 Dkt. 9.

16 The Court found that:

17 Defendant poses a risk of flight on several grounds. There have been 24
18 warrants issued for failure to appear, including multiple warrants while
19 defendant was under federal supervision. Defendant poses a risk of danger
20 based on his pattern of criminal conduct including violent offenses, and his
21 history of drug use, gun possession and convictions for drug distribution.
22 Defendant further exhibited a pattern of deception during federal
supervision with both the Court and the probation office.

Id.

DISCUSSION

The Court may reopen a detention hearing "if the judicial officer finds that
information exists that was not known to the movant at the time of the hearing and that has a

01 material bearing on the issue whether there are conditions of release that will reasonably
02 assure the appearance of such person as required and the safety of any other person and the
03 community.” 18 U.S.C. § 3142(f)(2).

04 In this case, the Defendant does not challenge any of the findings of the Court in the
05 Detention Order. The only bases for reopening the Detention Order relied upon by
06 Defendant are that he is in a stable long term relationship, his cooking equipment for his
07 business is in storage and will be lost if he is not released, and he is in pain from an ankle
08 injury. Dkt. 25 at 2-3. None of these arguments are availing.

09 Although Defendant alleges in his motion that “because counsel had only a full day to
10 prepare for the hearing, Mr. Abercrombie did not have the ability to present all of the
11 information to the court that supports release,” Defendant chose not to avail himself of a
12 continuance pursuant to 18 U.S.C. § 3142(f)(2), which permits a continuance of the detention
13 hearing for up to five days on the defendant’s motion, or longer if there is “good cause”.
14 Regardless, none of the information Defendant now presents was unknown to the Defendant,
15 and indeed information regarding his long term relationship, the desire to return to his
16 business activities, and his ankle injury were all presented at length at the detention hearing.
17 Dkt. 32 at Ex. A.

18 In particular, nothing in the record supports Defendant’s argument that release is
19 necessary to address his ankle injury. Dkt. 25 at 3-4. A review of Defendant’s medical
20 records demonstrate Defendant has ongoing access to care, and that surgery is not indicated at
21 this time. Dkt. 32, Ex. B at 11, 26, 39, 64 (order for the defendant to have a lower bunk to
22

01 avoid further injury, bandaging provided to stabilize and support his ankle, permission
02 provided for brace to be supplied from home, x-ray noting fracture is healed.) Courts have
03 rejected claimed medical needs as a basis for release. *See, e.g. United States v. Koenig*, 912
04 F.2d 1190, 1193 (9th Cir. 1990)(“The evidence of a medical condition presented by Koenig
05 does not indicate an emergency, or a condition that would necessarily inhibit flight”).

06 The Court further finds that Defendant’s allegations do not rise to the level of being
07 material to the issue of detention or release when considered in light of the facts relevant to
08 the 18 U.S.C. § 3142(g) factors¹ discussed below. Defendant has a significant criminal
09 history including federal convictions for controlled substances and firearms. He violated the
10 terms of his federal supervision three times, and his supervision was ultimately terminated
11 upon request by the Probation Office. As the Court found at the time of the original
12 Detention Hearing, Defendant poses a risk of flight on the grounds that there have been 24
13 warrants issued for failure to appear, including multiple warrants while defendant was under
14 federal supervision, and Defendant exhibited a pattern of deception during federal supervision
15 with both the Court and the probation office.

16 Finally, it appears that in a call from the FDC on the day after the Detention Hearing,
17 Defendant sought the assistance of another person to report his cellphone stolen, in order that
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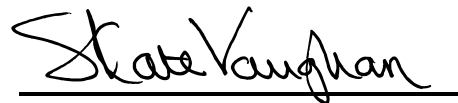
19 ¹ A Court deciding a detention issue is to consider the following factors: (1) the “nature and
20 circumstances of the offense charged,” (2) the “weight of the evidence against” the defendant, (3) the
21 “history and characteristics” of the defendant, including his “character, physical and mental condition,
22 past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning
appearance at court proceedings,” and (4) “the nature and seriousness of the danger to any person or
the community that would be posed by the person’s release.” 18 U.S.C. § 3142(g).

01 the line be discontinued and the cellphone wiped. At the end of the call, Defendant repeated
02 his request that the cellphone be reported to T-Mobile as stolen and wiped, and that the call to
03 T-Mobile should be made immediately. Dkt. 32 at Ex. C. Conduct that appears to involve
04 an effort to interfere with the course of an investigation is of concern to the Court.

05 Defendant's extensive criminal history, including prior federal convictions, his poor
06 performance under supervision, his record of failures to appear, and his history of deception
07 with both the Probation Office and the Court, establish that Defendant presents both a risk of
08 flight and a danger to the community.

09 The motion is DENIED.

10 DATED this 29th day of September, 2021.

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13 S. KATE VAUGHAN
14 United States Magistrate Judge
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